

Appeal from decision of Alaska State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease. AA-48579-V.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

Under 30 U.S.C. § 188(c) (1982), a lease terminated automatically for late payment of annual rental may be reinstated upon receipt of a petition for reinstatement showing that reasonable diligence was exercised or that the failure to pay timely was justifiable. In the absence of such proof, e.g., where the lessee mailed the payment after the lease anniversary date as a result of an oversight, the petition for reinstatement is properly denied.

APPEARANCES: James P. Felt, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

James P. Felt has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated July 5, 1984, denying his petition for reinstatement of noncompetitive oil and gas lease AA-48579-V.

Oil and gas lease AA-48579 was originally issued to United Arctic Oil, Inc., effective May 1, 1983. On August 19, 1983, appellant filed a request for partial assignment of this lease to him. In a February 1, 1984, decision, BLM approved assignment of a 100 percent interest in the lease with respect to 80 acres of land situated in the N 1/2 SE 1/4 sec. 8, T. 8 S., R. 1 W., Copper River Meridian, Alaska, to appellant, effective September 1, 1983. The leasehold interest assigned to appellant was assigned BLM lease number AA-48579-V. The February 1, 1984, BLM decision, also stated that appellant was responsible for submitting his "first rental payment" in the amount of \$ 80 by May 1, 1984, the anniversary date of the lease.

By notice dated June 15, 1984, BLM informed appellant that his oil and gas lease had terminated on May 1, 1984, for failure to pay the annual

rental on or before the anniversary date of the lease. The notice also advised appellant that he had a right to petition for reinstatement of the lease "under either Class I or Class II reinstatements," and outlined the conditions which must be satisfied for reinstatement under each class. The record indicates that appellant received this notice on June 19, 1984.

On June 25, 1984, appellant filed timely a petition for reinstatement of oil and gas lease AA-48579-V, together with a photocopy of a cancelled check (No. 1018) drawn on the First Security Bank of Utah in the amount of \$ 80. The check was dated May 6, 1984, and has the lease number on its face. The record indicates that the check was sent to the Minerals Management Service (MMS) in an envelope postmarked May 8, 1984, and was deposited by MMS. ^{1/} Appellant admitted that he had failed to pay timely but stated that it was due to an "oversight." He also stated that he should be considered to have acted with "reasonable diligence." Appellant specifically stated that he was applying for a class I reinstatement and that "UNDER NO CIRCUMSTANCES WILL I CONSIDER A CLASS II REINSTATEMENT." (Emphasis in original.)

In its July 1984 decision, BLM denied appellant's petition for a class I reinstatement, concluding that appellant's failure to pay his annual rental timely was neither "justifiable" nor "not due to a lack of reasonable diligence."

In his statement of reasons for appeal, appellant contends that his failure to pay timely was "not intentional," he did not know his late payment would result in "such a penalty," and BLM should not have cancelled his check.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that upon failure of a lessee to pay rental on or before the anniversary date of a lease, on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. See 43 CFR 3108.2-1(a). This occurs regardless of whether the payment was received 1 day after the lease anniversary date or later. Because appellant's rental payment was not received on May 1, 1984, the due date, oil and gas lease AA-48579-V terminated automatically.

Under 30 U.S.C. § 188(c) (1982), a terminated oil and gas lease may be reinstated where the rental is paid within 20 days of termination upon a showing by the lessee that the failure to pay on or before the lease anniversary date was either justifiable or not due to a lack of reasonable diligence. ^{2/} See 43 CFR 3108.2-1(c) (1983). Harriet C. Shaftel, 79 IBLA 228, 230 (1984); Vernon I. Berg, 72 IBLA 211 (1983).

^{1/} In its February 1984 decision, BLM had instructed appellant to send his rental payment to the MMS office in Denver, Colorado. The record indicates that appellant's check was forwarded to the Accounting Center, MMS, in Lakewood, Colorado, and received on May 17, 1984.

^{2/} As set forth in BLM's June 1984 notice of termination, reinstatement under 30 U.S.C. § 188(c) (1982) is termed a class I reinstatement.

Mailing the rental payment after the due date does not constitute reasonable diligence. 3/ O. L. Foster, 72 IBLA 367 (1983). However, failure to pay on time may be considered justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. Joanne F. Bechtel, 76 IBLA 1 (1983), and cases cited therein. Negligence, forgetfulness, and inadvertence do not justify failure to pay rental timely or a class I reinstatement, since they are events within the lessee's control. Eleanor L. M. Dubey, 76 IBLA 177 (1983); John E. Conner, 72 IBLA 83 (1983).

Appellant also apparently suggests that the acceptance of his rental check is sufficient to bind the Department to reinstate his lease. The cashing of the checks and depositing them in the unearned account does not constitute an acceptance of the payments nor a determination that a lease will be reinstated. A refund will be made in due course. Rose L. Terenzi, 68 IBLA 21 (1982), and cases cited therein.

Accordingly, we conclude that BLM properly denied appellant's petition for a class I reinstatement of oil and gas lease AA-48579-V under 30 U.S.C. § 188(c) (1982). Nevertheless, section 31 of the Mineral Leasing Act, supra, was recently amended by section 401 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), P.L. 97-451, 96 Stat. 2447 (1983), codified at 30 U.S.C. § 188(d) through (j) (1982), to provide an additional opportunity to reinstate a lease terminated by operation of law. In particular, section 401 of FOGRMA, supra, provides that the Secretary may reinstate an oil and gas lease where it is demonstrated that the failure to pay on time was "inadvertent." 30 U.S.C. § 188(d)(1) (1982). 4/ Appellant's statement of reasons gave sufficient justification for a class II reinstatement, had appellant met the conditions set forth at 30 U.S.C. § 188(d)(2) and (e) (1982). In its lease termination notice, BLM advised appellant that he could pursue a class II reinstatement of his lease. However, appellant's petition for reinstatement specifically stated that he did not seek a class II reinstatement.

3/ The regulations governing automatic termination and reinstatement provide that where a rental payment is mailed "on or before the lease anniversary date and is received in the proper BLM office no later than 20 days after such an anniversary date [it] shall be considered as timely filed." 43 CFR 3108.2-1(a) (1983). In effect, the failure to receive payment on time when payment is mailed prior to the expiration date but received within 20 days of the due date is deemed not due to lack of reasonable diligence; and, thus, the lease will be reinstated under 30 U.S.C. § 188(c) (1982). See 48 FR 33655 (July 22, 1983). In this case, however, appellant's rental payment was mailed after the anniversary date. Thus, he cannot take advantage of 43 CFR 3108.2-1(a) (1983).

4/ As set forth in BLM's June 1984 notice of termination, reinstatement under 30 U.S.C. § 188(d) (1982) is termed a class II reinstatement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Bruce R. Harris
Administrative Judge

